

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Criminal Case No. 18-cr-00189-REB

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARRYN JACKSON,

Defendant.

ORDER DENYING MOTION TO SUPPRESS

Blackburn, J.

The matter before me is defendant Garryn Jackson's **Motion To Suppress Evidence Illegally Obtained on March 16, 2018 and Fruits of the Poisonous Tree** [#23],¹ filed July 23, 2018. The government filed a response [#32], and Mr. Jackson filed a reply [#37]. I held a hearing on the motion on November 14, 2018, at which I received evidence and argument. I deny the motion.

In fashioning my ruling I have considered all relevant adjudicative facts in the file and record of this case. I have considered the evidence educed at the November 14, 2018, suppression hearing. I have considered, but not necessarily accepted, the reasons stated, arguments advanced, and authorities cited by counsel in their papers and during oral argument following the hearing.

¹ "[#23]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

In assessing the credibility of the law enforcement officers who testified during the suppression hearing, I have considered all facts and circumstances shown by the evidence that affected the credibility of the witnesses, including the following factors: the witness's means of knowledge, ability to observe, and strength of memory; the manner in which the witness might be affected by the outcome of the hearing; the relationship the witness has to either side in the case; and the extent to which, if at all, the witness was either supported or contradicted by other evidence presented during the hearing.

I have considered the totality of relevant circumstances. My findings of fact are based on at least a preponderance of the evidence.

I. FINDINGS OF FACT

On the afternoon of March 16, 2018, a team of narcotics detectives and police officers with Denver Police Department ("DPD") District 6 were conducting a "buy-bust" operation – making undercover, street-level narcotics buys using confidential informants – in the 2200 block of Lawrence Street in downtown Denver, Colorado. This area, near the Denver Rescue Mission, is frequented by transients and the homeless, and is one of Denver's highest crime areas. Crack cocaine has been a particular problem in the area.

DPD Detective Timothy Goss, who testified at the hearing, was part of the team on the operation and was conducting surveillance that day. Detective Goss has been employed by the DPD for the past 13 years and has worked in narcotics enforcement since 2009. After driving by the area several times, Detective Goss parked his patrol car on Lawrence north and east of the corner of Lawrence Street and Park Avenue West. Through the back window of the car, he observed a group of people congregated in that area of the block. One of these individuals, later identified as Mr. Jackson, stood

out to him among the largely homeless population because the individual appeared healthy and was better dressed, wearing clean, black sweatpants and a hooded sweatshirt and bright white shoes.² Based on his training and experience, Detective Goss suspected this individual might be selling narcotics. He testified that narcotics dealers are known to frequent the area because of the high concentration of homeless people, many of whom are drug-addicted. He further explained that narcotics dealers, knowing DPD conducts surveillance in that area, often will use a homeless person to make the actual sale of narcotics so as to minimize the dealers' own risk of exposure.

The confidential informant ("CI") operating that day was known to Detective Goss to be reliable. Through the rear window of his patrol car, Detective Goss observed the CI enter the 2200 block of Lawrence Street. The CI approached an African-American man in a beige Carhartt-type jacket, later identified as Kevin Tindall, who appeared to be transient or homeless. They spoke for five to ten seconds and then walked further down the sidewalk, where they met up with Mr. Jackson. The three stopped and huddled closely together. Although he could not see their hands, Detective Goss testified, based on his training and experience as a narcotics officer, that it was his belief a narcotics exchange took place.

The CI then broke off from the group and continued walking down the block. Mr. Jackson and Mr. Tindall moved off in the opposite direction, toward where they had first interacted. Shortly thereafter, Detective Goss witnessed Mr. Jackson and Mr. Tindall

² Detective Goss acknowledged that in relaying Mr. Jackson's description to the arrest teams, he did not inform the other officers of the shoes or pants Mr. Jackson was wearing.

come together again and make an exchange. Based on his training and experience as a narcotics detective, Detective Goss believed Mr. Jackson had used Mr. Tindall as a middleman to conduct the narcotics sale to the CI.

Meanwhile, the CI met up with another District 6 detective on the team and gave the signal indicating he had purchased crack cocaine from Mr. Tindall. The detective relayed this information to the other members of the team via his radio. Detective Goss called out a description of both men and the area in which they were standing, noting they were located next to an orange fence and close to an uninvolved woman in a red coat.³ Although there was no recording of that call presented at the hearing, Officer Teresa Gillian, the community resource officer for District 6, who was part of the operation that day, testified she heard the descriptions of Mr. Jackson and Mr. Tindall come over the radio. Sergeant Foster, who was supervising the operation, then notified uniformed arrest teams to move in and make contact with the two men.

Officer Gillian, who had been parked in an alley behind the Denver Rescue Mission, pulled up to the area in her marked police vehicle. At the same time, three uniformed bicycle officers who had been positioned one block over arrived on the scene. Video from each of their body cameras was played during the suppression hearing. Two of the officers approached Mr. Tindall and asked if he was armed, and Officer Gillian handcuffed him.

The third bicycle officer, Officer Randall, pulled up in front of Mr. Jackson. As Mr.

³ Mr. Jackson's suggestion in his motion that Detective Goss requested this woman and/or others in the vicinity also be detained is not supported by the evidence. It is clear Detective Goss referenced the woman only as a means to help the arresting officers identify where Mr. Jackson and Mr. Tindall could be found.

Jackson made movements suggesting he might walk away, Officer Randall grabbed him by the right sleeve, saying “You’re not going anywhere, have a seat.” Mr. Jackson paused for a few seconds, then pivoted to his right and used his left hand to strike Officer Randall’s arm and break his hold. The two struggled briefly, then Mr. Jackson managed to slip out of his sweatshirt and broke free. He attempted to run, but stumbled. Officer Randall grabbed Mr. Jackson again and attempted to bring him to the ground. As the two struggled, something metallic hit the pavement with a perceptible sound, and one of the officers yelled “Gun, gun, gun.” Officer Gillian testified that Officer Randall subsequently retrieved a gun from the street where this second scuffle occurred.

Mr. Jackson broke free a second time and ran north on Lawrence and west on Park Avenue West. He was apprehended shortly thereafter in the parking lot of a sandwich shop several blocks away. In a subsequent search incident to Mr. Jackson’s arrest, DPD officers found crack cocaine, cocaine base, and methamphetamine on his person. They also recovered approximately \$500, including two marked \$20 bills officers had given the CI to purchase the crack cocaine.

II. CONCLUSIONS OF LAW

Mr. Jackson subsequently was indicted on charges of distribution of a controlled substance, possession with intent to distribute a controlled substance, possession of a firearm in relation to a drug trafficking crime, and possession of a firearm by a prohibited person. By this motion, Mr. Jackson seeks to suppress the evidence recovered during the search on the ground that the officers lacked probable cause to arrest him. **See**

United States v. Jarvi, 537 F.3d 1256, 1259 (10th Cir. 2008) (“The poisonous tree doctrine allows a defendant to exclude evidence “come at by exploitation” of violations of his Fourth Amendment rights.”) (citing **Wong Sun v. United States**, 371 U.S. 471, 487-88, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963)). As the evidence plainly shows otherwise, I deny the motion.

In the context of warrantless arrests, the Fourth Amendment requires the arresting officers have probable cause to believe the person to be arrested has committed a crime. **United States v. Vazquez-Pulido**, 155 F.3d 1213, 1216 (10th Cir.), **cert. denied**, 119 S.Ct. 437 (1998). “Probable cause to arrest exists only when the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” **United States v. Valenzuela**, 365 F.3d 892, 896 (10th Cir. 2004) (citation and internal quotation marks omitted). This is an objective standard, **District of Columbia v. Wesby**, – U.S. –, 138 S.Ct. 577, 585 n.2, 199 L.Ed.2d 453 (2018); **Valenzuela**, 365 F.3d at 896, which looks to the totality of the circumstances, **Illinois v. Gates**, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983); **United States v. Hansen**, 652 F.2d 1374, 1388 (10th Cir. 1981). While probable cause to arrest does not require facts sufficient to establish guilt, it does demand more than mere suspicion. **Hansen**, 652 F.2d at 1388.

The facts known to the officers in this case were more than sufficient to establish probable cause to arrest Mr. Jackson with at least possession and distribution of, or

aiding and abetting the possession and distribution of, a controlled substance, which is a violation of both federal and Colorado law. **See** 21 U.S.C. § 841(a)(1) & 18 U.S.C. § 2;⁴ §§18-18-405(1)(a) & 18-1-603, C.R.S.⁵ Based on his observations at the scene, coupled with his nine years of experience in narcotics operations and his knowledge of the area and the intent of the buy-bust operation being conducted that day, Detective Goss knew the following facts:

- (1) that illegal drug transactions, especially involving crack cocaine, were known to occur in the area near the Denver Rescue Mission;
- (2) that drug dealers often employed a homeless or transient person to act as a middleman during a drug transaction;
- (3) that a CI had been engaged and sent in to the area with the intention to purchase drugs;
- (4) that the CI had made contact with Mr. Tindall;
- (5) that the CI and Mr. Tindall broke off from the group of people amongst whom they previously had been standing and interacted with Mr. Jackson more privately;
- (6) that after the CI left the area, Mr. Jackson and Mr. Tindall came back together and appeared to make an exchange;
and

⁴ 21 U.S.C. § 841(a)(1) provides “it shall be unlawful for any person knowingly or intentionally – to . . . distribute . . . a controlled substance.” 18 U.S.C. § 2(a) provides “[w]hoever . . . aids, abets, counsels, commands, induces or procures [the commission of an offense against the United States], is punishable as a principal.”

⁵ Section 18-18-405(1)(a) makes it “unlawful for any person knowingly to . . . distribute, or to possess with intent to . . . distribute, a controlled substance; or induce, attempt to induce, or conspire with one or more other persons, to . . . distribute, or possess with intent to . . . distribute, a controlled substance[.]” Section 18-1-603, C.R.S. provides that “[a] person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets, advises, or encourages the other person in planning or committing the offense.”

(7) that after this interaction, the CI left the scene and gave a signal that he had just successfully purchased drugs.

Given these facts, the fact that Detective Goss did not actually witness drugs or money change hands is irrelevant. The reasonable inferences to be drawn from these facts fully support probable cause to believe Mr. Jackson had participated in the sale of crack cocaine to the CI using Mr. Tindall as a go-between.

Moreover, that Detective Goss did not personally participate in the arrest likewise is irrelevant. Under the collective knowledge doctrine, an arrest may be found to be supported by probable cause “where one officer has probable cause and instructs another officer to act” even though the first officer “does not communicate the corpus of information known to [him] that would justify the action.” **United States v. Chavez**, 534 F.3d 1338, 1345 (10th Cir. 2008), **cert. denied**, 129 S.Ct. 953 (2009) (footnote omitted).⁶ Detective Goss’s relevant observations and the inferences reasonably to be drawn therefrom establishing probable cause to arrest Mr. Jackson thus properly are imputed to the officers who effectuated the arrest.

Given that the arrest was proper, the search of Mr. Jackson which resulted in the discovery of drugs and the marked currency also was righteous. “A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.” **United States v. Robinson**, 414 U.S. 218, 235, 94 S.Ct. 467,

⁶ This description sets forth the vertical collective knowledge doctrine. There also may be horizontal collective knowledge “where a number of individual law enforcement officers have pieces of the probable cause puzzle, but no single officer possesses information sufficient for probable cause,” which requires consideration of “whether the individual officers have communicated the information they possess individually, thereby pooling their collective knowledge to meet the probable cause threshold.” **Chavez**, 534 F.3d at 1345.

477, 38 L.Ed.2d 427 (1973). Mr. Jackson also has forfeited any Fourth Amendment claim relating to the gun recovered from the street where he scuffled with officers by abandoning it when he fled the scene. ***See United States v. Jones***, 707 F2d 1169, 1172 (10th Cir.) (“When individuals voluntarily abandon property, they forfeit any expectation of privacy in it that they might have had.”), ***cert. denied***, 104 S.Ct. 184 (1983).

III. ORDERS

Based on the foregoing, I find and conclude that Mr. Jackson’s motion to suppress must be denied.

THEREFORE, IT IS ORDERED that Mr. Jackson’s **Motion To Suppress Evidence Illegally Obtained on March 16, 2018 and Fruits of the Poisonous Tree** [#23], filed July 23, 2018, is denied.

Dated December 7, 2018, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge